

Deposition of MATTHEW W. KURTEN taken pursuant to notice at the law offices of Richards, Layton & Finger, One Rodney Square, Third Floor, Wilmington, Delaware, beginning at 10:00 a.m. on Wednesday, May 10, 2006, before Kathleen White Palmer, Registered Professional Reporter and Notary Public.

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23 Q. Did you ever see the vehicle stop, the stolen

24 police vehicle stop?

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1 A. Yes, at one point it did.

2 Q. When it stopped, how far away was it from you

3 at that point?

4 A. Again, when it stopped, I actually made my way

5 into the 1100 block of West 5th Street on the south

6 side of the street on the sidewalk using other parked

7 vehicles as cover to try to see if I can't get a

8 closer visual on the suspect.

9 So the closest point in time where I was in

10 relation to him, I would say I was maybe 15, 20 feet

11 away when the vehicle was stopped -- the suspect

12 vehicle was stopped initially.

13 Q. When say that you were 15 to 20 feet away from

14 the stolen vehicle when you first observed it and it

15 was stopped, how far away were you from the police

16 vehicle that you were driving?

17 A. At the point where I was closest to him?

18 Q. Yes, sir.

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19 A. Maybe 15, 20 feet. Maybe a couple -- maybe a

20 couple car lengths. Somewhere in that vicinity.

21 Fifteen to 25 feet, I would say.

22 Q. Is it fair to say that when you got out of your

23 vehicle that you then walked toward the suspect

24 vehicle?

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1 A. I would not put myself in danger and walk in

2 the middle of the road, no, towards him. That's my --

3 what I'm picturing right now, I would not do that.

4 Q. Were you walking on the sidewalk?

5 A. Yes, on the south side of the street.

6 Q. Were there other vehicles parked on the south

7 side of that street?

8 A. Certainly. Certainly.

9 Q. Did you see any citizens on the street as you

10 were walking toward the suspect vehicle?

11 A. I did not.

12 Q. On either side of 5th Street?

13 A. I don't recall seeing any.

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20 Q. So at the point at which you fired two or three

21 shots, where was Officer Ciritella then standing?

22 A. I believe he was back or at the corner of the

23 building, 5th and Harrison, northeast corner.

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8 Q. When you fired the second two or three shots,

9 how far do you think you were from the car?

10 A. From the rear of the car or from where

11 Mr. Smith sat or what point are you looking at?

12 Q. From the rear bumper of the car.

13 A. Rear bumper?

14 Q. Yes, sir.

15 A. I'd say anywhere from 12 to 17 feet.

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9 Q. Did you see any citizens not involved in this

10 incident on the street or on their porches in the 500

11 block of Harrison Street when you discharged any of

12 the five shots?

13 A. No.

14 Q. Did you see Officer Dempsey prior to the point

15 at which you fired your first two or three rounds?

16 A. I do not believe so.

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3 Q. Why did you stop shooting your weapon on
4 September 13, 2003? You said you fired a total of
5 five rounds. Why did you stop shooting?

6 A. As the incident unfolded, it appeared that
7 Mr. Smith was incapacitated. I remember watching him
8 slump over to the right-hand side. The car was
9 approached, safely put in park, and there was no
10 further use of force necessary at that point.

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3 Q. Is there any other situation involving a

4 serious police matter in which you did not write a

5 report?

6 A. No.

7 Q. Were you told why it was not necessary for you

8 to write a report in this case?

9 A. No, I wasn't told.

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8 Q. But you hadn't heard that the cameras didn't
9 work?

10 A. Not to my recollection.

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18 Q. So as you were joining the pursuit, did you
19 hear the sirens of any other police vehicles?

20 A. I believe I did coming over the radio broadcast
21 as they were calling in the direction and the path of
22 pursuit, yes.

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13 Q. When you joined the pursuit on Jackson, you saw
14 vehicles in front of you; correct?

15 A. Yes.

16 Q. Did you see any vehicles behind you?

17 A. I believe there was vehicles coming, but I
18 couldn't tell you how many or exactly what point.
19 That was not -- I had a clear shot to get into the
20 line, so that's when I did it.

21 Q. As you're now part of this line or caravan of
22 police vehicles, do you recall any other police
23 vehicle getting behind you?

24 A. I couldn't tell you one way or the other.